

CALIFORNIA VALLEY **MIWOK** TRIBE, fka SHEEP RANCH OF ME-WUK INDIANS OF CALIFORNIA, Plaintiff - Appellant, v. UNITED STATES OF AMERICA, et al., Defendants - Appellees.

No. 04-16676

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

197 Fed. Appx. 678; 2006 U.S. App. LEXIS 21261

July 24, 2006, Submitted, San Francisco, California **

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).
August 17, 2006, Filed

NOTICE: [1]** RULES OF THE NINTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

PRIOR HISTORY: Appeal from the United States District Court for the Eastern District of California. D.C. No. CV-02-00912-FCD. Frank C. Damrell, Jr., District Judge, Presiding.

COUNSEL: For CALIFORNIA VALLEY MIWOK TRIBE, fka Sheep Ranch of the Me-Wuk Indians of California, Plaintiff - Appellant: [George L. Steele, Esq.](#) ▼, LAW OFFICES OF GEORGE L. STEELE, Pasadena, CA; [George L. Steele, Esq.](#) ▼, Pasadena, CA.

For UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF THE INTERIOR, GAIL NORTON, Secretary of the Interior, NEAL MCCALED, Assistant Secretary of Interior for Indian Affairs, Defendant - Appellee: [Debra G. Luther, Esq.](#) ▼, [McGregor W. Scott](#) ▼, USSAC - OFFICE OF THE U.S. ATTORNEY, Sacramento, CA.

JUDGES: Before: SILVERMAN and RAWLINSON, Circuit Judges, and BERTELSMAN, Senior District Judge. ***

*** The Honorable William O. Bertelsman, Senior United States District Judge for the Eastern District of Kentucky, sitting by designation.

OPINION

[*679] MEMORANDUM *

FOOTNOTES

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by [Ninth Circuit Rule 36-3](#) .

[2]** Before: SILVERMAN and RAWLINSON, Circuit Judges, and BERTELSMAN, Senior District Judge.***

The California Valley Miwok Tribe appeals the dismissal of its claims against the United States for breach of trust and violation of the Rancheria Act of 1958, as amended, arising out of the improper conveyance of tribal trust land to an individual Tribe member. We affirm.

We first reject the government's argument for summary affirmance. While the district court found no waiver of sovereign immunity on four theories, including the Administrative Procedure Act (APA), [5 U.S.C. § 706\(1\)](#), the court then proceeded to the merits of the statute of limitations issue. In doing so, it assumed correctly that sovereign immunity was waived under the APA, [5 U.S.C. § 702](#). The Tribe did not need to appeal this assumption because it was in its favor.

Next, although the Tribe correctly argues that the limitations period in [28 U.S.C. § 2401\(a\)](#) is not strictly jurisdictional, see [Cedars-Sinai Med. Ctr. v. Shalala](#), 125 F.3d 765, 770 (9th Cir. 1997); [Supermail Cargo, Inc. v. United States](#), 68 F.3d 1204, 1206 n.2 (9th Cir. 1995), **[**3]** we conclude that the district court nonetheless correctly analyzed the limitations issue and held based on the undisputed facts that the 1993 ALJ decision effectively put the Tribe on notice of its injury, adopting the reasoning of [Hopland Band of Pomo Indians v. United States](#), 855 F.2d 1573, 1577 (Fed. Cir. 1988). Under [Hopland's](#) "knew or should have known" standard, Yakima Dixie was in a position to obtain knowledge of the Tribe's injury caused by the ALJ's 1993 decision, and the Tribe's claim thus accrued at that time.

Finally, this case presents no exception to the general rule that we will not consider arguments made for the first time on appeal. See [United States v. Monreal](#), 301 F.3d 1127, 1131 (9th Cir. 2002). Thus, we do not reach the Tribe's equitable estoppel and tolling arguments.

AFFIRMED.

CONCUR BY: SILVERMAN

CONCUR

SILVERMAN, Circuit Judge, concurring:

As often occurs, the district court decided this case on one fully dispositive ground, and then, in an example of belt-and-suspenders precaution, it also decided the case on an alternative ground, just in the event that its first basis was mistaken. The appellant totally failed **[**4]** to address in its opening brief the first alternative basis on which the district court dismissed the case - that the suit was barred by sovereign immunity. Because appellant failed to argue, must less show, why the district court's sovereign immunity ruling was in error, I would affirm the district court.